



# POLICE / PROSECUTOR UPDATE



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This month we will look at some new legislation. All take effect on July 1 unless otherwise noted. Space prevents an in-depth examination.

P.L. 82-2004 amended **IC 9-30-5-3**, making it a Class D felony if the operator is at least age 21, commits operating with at least .15 BAC or OWI (endangerment), and there is at least one passenger under age 18 in the vehicle.

Both P.L. 82-2004 and P.L. 76-2004 amended **IC 9-30-5-5** (operating causing death). They created two new Class B felonies. The first is committed if the person knowingly operated the motor vehicle with a driver's license that was suspended or revoked for a previous conviction for OWI under IC 9-30-5. The second is committed if the person is at least age 21 and has a BAC of at least .15 or has a schedule I or II controlled substance or its metabolite in his or her blood.

P.L. 48-2004 amended **IC 9-24-7-4** to specify that a learner's permit holder who is less than age 18 and holds a validated permit, or who is enrolled in an approved driver's education course, may drive a motor vehicle when the seat beside the driver's seat is occupied by a stepparent of the permit holder who holds a valid driver's license.

P.L. 76-2004 dealt in part with ignition interlock devices. It increases the opportunities for courts to require such devices. It amends **IC 9-30-5-8** to make knowing or intentional tampering with such device a Class B misdemeanor (it is currently a Class B infraction without the knowing or intentional element). It creates new offenses for persons operating a motor vehicle without a functioning ignition interlock device when such person is prohibited from operating a motor vehicle without such a device. It is a Class B infraction but is a Class B misdemeanor if the person *knows* of the ignition interlock requirement. Also, the BMV is supposed to place ignition interlock restrictions on a person's driving record so that when an officer runs a check, it will show the requirement.

It should be noted that the new child booster

seat law does not take effect until July 1, 2005. And the legislature did *not* fix the pick-up/SUV safety belt loophole, so if a SUV has a truck plate, it is a truck for purposes of the seatbelt law.

P.L. 30-2004 amended **IC 35-44-3-9** (trafficking with an inmate). The offense is a Class C felony if the article is a controlled substance or a deadly weapon.

P.L. 46-2004 amended the neglect of a dependent statute, **IC 35-46-1-4**. If the neglect results in the death of a dependent less than age 14 and is committed by a person at least age 18, the offense is a Class A felony. This public law also amended **IC 35-46-1-8**. Contributing to delinquency is a Class C felony if committed by a person at least age 21 who knowingly or intentionally furnishes (1) an alcoholic beverage to a person less than age 18 when the offender knew or reasonably should have known that the person was less than age 18, or (2) a controlled substance or a drug in violation of Indiana law, *and* consumption, ingestion, or use of the alcoholic beverage, controlled substance, or drug is the proximate cause of the death of any person.

P.L. 85-2004 requires training in interacting with persons with mental illness, addictive disorders, mental retardation, and developmental disabilities for law enforcement personnel, jail officers, probation officers, and correctional officers. This public law also amended battery by body waste, **IC 35-42-2-6**, to include within the definition of "corrections officer" an employee of a "circuit, superior, county, probate, city, or town court."

P.L. 87-2004 amended the curfew law, **IC 31-37-3-2, -3**, to provide that a law enforcement officer may not detain a child or take a child into custody for a curfew violation unless the officer "after making a reasonable determination and considering the surrounding facts and circumstances reasonably believes" the child has violated the curfew law *and* there is no legal defense to the violation. This is effective now.